UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

TAJU AHMED
PETITIONER
-VS-

DAVID KNOWLES DIRECTOR

RESPONDENT APPELLEE

D.C. NO
00-00084-TJW

2254 1983
FILING FEE PAID
Yes ___ No ✓
IFP MOTION FILED
Yes ___ No ✓
COPIES SENT TO
Court ✓ ProSe ___

FILED
JUL 25 2008
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

'08 CV 1352 BTM NLS

HERE I CAME PETITIONER TAJU AHMED IN THE ABOVE INTITLED CASE FIZE MOTION FOR SECOND REVIEW IN UNITED STATES DISTRICT COURT. BECAUSE THERE ARE A LOT OF IMPERTINENT SUPPORTING AVIDENCE MISSING TO PROVE I AM ENESNT ARE COUNSELE WHO REPERSENTED ME NEGLECTED TO SHOW WHAT WAS CAUSE PROCEEDURAL DEFAULTED. MY ~~LAYER~~ LAWYER SHE DID NOT FOLLOW THE COURT ORDER. AS I BELIVE THE COURT WANT TO KNOW WHAT WAS CAUSE PROCEEDURAL DEFAULTED EVEN THE MAGESTRET JUDGE COMMENT ON THAT. I TOLD MY LAWYER TO METION PYSCHTIRIC EVEDENS WHAT WAS CAUSE PROCEEDURAL DEFAULTED SHE DID NOT FLOW THE COURT ORDER.

I WAS on heaVEY medication which cause mind ~~At~~ ALTERING and cause slowe motion, POOR cosentretION, BlurrED VISION

FOR Exhibit I put TOGETHER THE DOCTOR prescribED medicATION copys FORMS. THIS DOCTORS CAN STAND wwitens HOW This medication mind ALTERING & sideeffect. THAT WAS main Reason and I am none English speaker, AN Treaned in LAW. Those ARe main Reason I DID not PROssesed my Appeals on timilly MATTER.

IN THIS present Time I am filling my case from Depratment of mental Health VACAVILL. I WAS HospITAlAzed in ATAScadero State HOSPITAL. Since I come to PRISON I am in mental Treatment PROGRam. also I WAS HospITalazed VArrigin ARRelington since 1991 I end up in mental Treatm-ent Program.

I am mental Deffect desorder At The time of accident and prorey To The accident. EVEN The magestret Judge belived IT WAS Accident. I WAS Receiving social security dissablte FOR MY mental ILLENSS.

Please Go througth the Exhibit Step by Step

most OF this medicen I WAS takening Back in 1998 that WAS when I MADE PRoceedural defaulted. Becouse the Heavy medicen I WAS takening and Diffeeult to Andrastood English untrean in LAW.

Your merciful NAme Appriciate in this matter

7/19/08
DAte

[signature]

California Health and Human Services Agency

Department of Mental H

NOTE: SEND COPY OF PHYSICIAN'S ORDER TO PHARMACY AFTER EACH ORDER IS SIGNED.

Date	Time	Problem No.	PHYSICIAN'S ORDERS AND MEDICATION (PHYSICIAN MUST SIGN EACH ORDER)
11/5/07		4	CBC, chem panel, lipid panel
			[signature]
11/05/07	1140		NOTED MTA [signature]
11/5/07		16	Change Triamcinolone inhaler ii puffs to BID not prn Till
		#1 CTP	Noted by [illegible] MTA 11/5/07 @ 1600 [signature]
11/5/07	2200		24° [illegible]
11/26/07	1100		ORDERS DECEMBER 1-31
			LOW CHOLESTEROL, LOW FAT DIET - NO PORK
			LOPID 600 mg PO BID 1/2 hours before meals
			SEROQUEL 400 mg PO HS
			STELAZINE 20 mg PO HS
			EFFEXOR XR 150 mg PO QAM + 75 mg QH
			TRIAMCINOLONE INHALER ii puffs BID
			TYLENOL 650 mg PO TID prn pain
			MAALOX max 10cc BID prn heartburn
			DEPAKOTE ER 1500 mg PO HS
			ARTANE 5 mg PO BID
			OMEPRAZOLE 20 mg PO QAM
		CTP #2	VISTARIL CONC 75 mg PO TID prn anxiety/agitation
			BENADRYL 50 mg PO BID prn eps
			[signature]
11/26/07	1200		NOTED MTA [signature]

ALLERGIES: 11/26/07 2358 24° [illegible]

NSAIDS, TOPOMAX

Start a New Form if No Number Shows.

PHYSICIAN'S ORDERS

CONFIDENTIAL CLIENT/PATIENT INFORMATION

SEE W&I CODE 5328

MH 5660 (5/99)
SECTION 4000

AHMED, TAJU
X-39733 6/25/59

A301

California Health and Human Services Agency

Department of Mental Health

NOTE: SEND COPY OF PHYSICIAN'S ORDER TO PHARMACY AFTER EACH ORDER IS SIGNED.

Date	Time	Problem No.	PHYSICIAN'S ORDERS AND MEDICATION (PHYSICIAN MUST SIGN EACH ORDER)
12/17/07		15⁰⁰	ORDERS FOR JANUARY 1-31 2008
		✓✓	LOW CHOLESTEROL, LOW FAT DIET, NO PORK - SMD
		✓	LOPID 600 mgm PO BID (1/2 hour before meals)
		✓	SEROQUEL 400 mgm PO HS
		✓	STELAZINE 20 mgm PO HS
		✓✓	EFFEXOR XR 150 mgm PO QAM & 75 mgm QHS
		✓	TRIAMCINOLONE INHALER ii puffs BID
		✓	TYLENOL 650 mgm PO TID prn pain / headache
		✓	MAALOX MAX 10cc BID prn heartburn
		✓	DEPAKOTE ER 1500 mgm PO HS
		✓	ARTANE 5 mgm PO BID
		✓	OMEPRAZOLE 20 mgm PO QAM
		✓	VISTARIL CONC 75 mgm PO TID prn anxiety / agitation
		✓	BENADRYL 50 mgm PO BID prn EPS
			Noted by P. Whaley MTA 12/17/07 @1600 [signature]
12/17/07	2 am		24° [illegible]
12/19/07	12		add veggie snacks on evenings x 30 days starting today [signature]
Copy of MH5282			NOTED C 12n 12-19-07 C [signature] MTA
12/20/07	0100 hrs		24° Audit noted adequate

ALLERGIES:

TOPAMAX, NSAIDS

Start a New Form if No Number Shows.

PHYSICIAN'S ORDERS

CONFIDENTIAL CLIENT/PATIENT INFORMATION

SEE W&I CODE 5328

MH 5660 (5/99)
SECTION 4000

AHMED, TAJU
K-39733 6/25/59
143253-1 OTH

A301

SIDE EFFECT MONITORING   CIRCLE MEDICATON ORDERED

INSTRUCTIONS: Initial and sign once each page. Use the legend on the back of the form to record site of injection or reason for not administering medication/treatment.

Start	Stop	MEDICATIONS AND TREATMENTS	HOUR	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
12/1/07	12/31/07	**ANTIANXIETY: Vistaril, Benadryl, Ativan, Valium**	1w	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
		Drowsiness, dry mouth, involuntary motor	2w	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
		activity, lethargy, hypotension, clumsiness, dizziness, lightheadedness, nausea, vomiting, confusion, depression, slurred speech, tiredness, weakeness, stomach pain, tremors, irritability, yellow eyes/skin, sorethroat, fever.	3w	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
		ANTIANXIETY: Buspar	1w																															
		Dizziness, drowsiness, insomnia, nervousness, excitement, noise tolerance, motor	2w																															
		restlessness, unable to sit still, hallucination, confusion, anger/hostility, depression, hypotension, fatigue, constipation, tachycardia, dry moouth, increased appetite, photophobia, tremor, urinary frequency.	3w																															
			1/w	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
			2/w	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
			3/w	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

ALLERGIES: NSaidS, Topamax

MONTH: Dec. YEAR: 2007

AHMED, TAJU
K-39733 6/25/59
145253-1 OTH

MEDICATION AND TREATMENT RECORD

MH 5764 (10/93)

Confidential Client/Patient Information

INSTRUCTIONS: Initial and sign once each page. Use the legend on the back of the form to record site of injection or reason for not administering medication/treatment.

CALIFORNIA DEPARTMENT OF CORRECTIONS — **Region N / C / S**

Psychiatric Medications Informed Consent — **Facility** C-D

The medication Haldol has been recommended for the treatment of my mental problem (s). The Doctor has discussed the reasons why the above medication may be helpful, including the likelihood of the problem(s) improving or not improving with and without medication. I understand that medication will usually be given by mouth and that staff will observe my actually swallowing the medication. I have been told that the dosage of the medication may be adjusted and that the dosage range will be range from 0 mg. per day to a maximum of 20 mg. per day. Additional doses of this same type may be given, dependent on the staff's assessment of my behavior and my reported response to the medication.

The length of time this medication will be prescribed for me is dependent on my response to the medication. The physician has provided me a best estimate of my need for psychiatric medication and the length of time I am likely to be taking such medication. As with all medication, there may be side effects. I understand that I am to tell the staff if I have side effects, as in some cases side effects can be reduced by lowering the dose of medication or using another medication. The following checked side effects are relatively frequent:

[x] Heat Risk (Hyperthermia)	[x] Tremors	[x] Dry Mouth	[ ] Decreased Sex Drive
[ ] Nausea	[x] Rigidity of Neck	[x] Thirst	[ ] Liver Damage
[ ] Diarrhea	[x] Low Blood Pressure	[ ] Increase Heart Rate	[ ] Kidney Damage
[x] Constipation	[ ] Dizziness	[ ] Restlessness	[ ] Habit Forming
[x] Heartburn	[x] Weight Gain	[ ] Slowed Reflexes	[ ] Physical Dependence
[x] Blurry Vision	[ ] Weight Loss	[x] Trouble Urinating	[ ] Avoid Alcohol
[x] Drowsiness	[ ] Impotence or Sexual Dysfunction	[ ] Frequent Urination	[ ] ________
[x] Muscle Stiffness	[ ] Metallic Taste	[x] Sun Sensitivity	[ ] ________
[ ] Stop if Pregnant	[ ] Blood Cell Problems	[ ] Skin Rash	[ ] ________

- [ ] I have been told that this medication may produce persistent involuntary movements of the face or mouth and at times similar movements of the hands and feet. This condition is called Tardive Dyskinesia and, in certain cases these symptoms appear to be irreversible and may even appear after the medication has been stopped.
- [ ] Although the U. S. Government (FDA) has not approved this medication for my specific problem, doctors in the community have found it helpful for similar problems.
- [ ] I understand that I may change my decision to accept medication at any time by telling any member of the treatment team. Should I decide to stop or to decrease my psychiatric medication, I have been informed to do this under the guidance of staff and not to stop medication suddenly.
- [x] I am aware that this copy will be in my Health Record.
- [x] I want a copy of this consent for my own records.
- [ ] I want more printed information on this medication.
- [x] I agree to take the psychiatric medication as prescribed.

Exhibit No. 4

(signature) ________________ (Inmate-Patient Signature)

Does this inmate have the ability to read, comprehend and speak English? [ ] Yes [ ] No ________________ Primary Language

Comment: ________________

Medical/legal status of inmate/patient:

- [ ] Willing to take but refuses to sign the form. Verbal consent given. [ ] Yes [ ] No
  Signatures: ________ (physician) ________ (witness)
- [ ] Emergency medication given as authorized by PC 2600
- [ ] PC 2600 procedures started (date): __/__/__ with ________ PC 2600 coordinator
- [ ] PC 2600 case, medication explained.
- [ ] Inmate/patient appeared to understand
- [ ] Inmate/patient did not comprehend

Gilbert B. Green, M.D.
Staff Psychiatrist

(signature) ________ Physician's Signature — ________ Print Physician's Name — ________ Print Title — 3-3-97 Date

Prescribed for: AHMED, TAJU ________ K-39733
Last Name — First Name — MI — Case Number

[May substitute by Address-O-Graph in lower right hand corner]

[EAL generic.doc 2/5/96] 12 of 22

STATE OF CALIFORNIA
CDC 7276 (6/93)

STATEMENT OF INFORMED CONSENT ANTIPSYCHOTIC AGENTS

DEPARTMENT OF CORRECTIONS
DISTRIBUTION:
ORIG - HEALTH RECORD
COPY - PSYCHIATRIC FILE
COPY - INMATE/PAROLEE

STATEMENT OF INFORMED CONSENT

Taju Ahmed — INMATE NAME (PRINT OR TYPE)
T 16-39733 — CDC NUMBER

Dr. Keightley met with me and discussed my mental problems. The doctor told me of medications which are known to be of help in treating mental problems such as mine. The doctor told me of any division of opinion as to whether the medication will be helpful, why and how it works and its side effects. The doctor also discussed with me the likelihood of my improving or not improving without such medication(s). We discussed the reasonable treatment alternatives to medication and I understand that I may take the medication(s) and still be involved in other forms of treatment. If the medication is an injectable "long-acting" form, I understand that it may remain in my body for as long as six weeks.

I understand that I may withdraw consent at any time by informing any member of the treatment staff.

☑ I do ☐ I do not consent to taking this medication.

Name of drug, dosage and frequency: Risperdal ↑ 4mg daily, Zyprexa ↑ 20mg daily

INMATE'S SIGNATURE	DATE
X Ahmed Taju	12-11-02
WITNESS TO PATIENT'S SIGNATURE	**DATE**
X [signature]	12/11/02

☑ I have discussed the information on this form regarding this medication with the patient and it is my opinion that he/she has the capacity to understand that he/she is mentally ill, that the medication may help with his/her illness, and that there are possible side effects.

☐ I have discussed the information on this form regarding this medication with the patient and it is my opinion that he/she lacks the capacity to understand based upon the following evidence:________________

PHYSICIAN'S SIGNATURE	DATE

This is to inform you that your doctor has recommended a course of mental health treatment that includes the use of antipsychotic medications. This form will explain to you the type of medication you will receive, what it will do for you, and the possible side effects you may have.

I. SOME EXAMPLES OF THESE DRUGS ARE:

chlorpromazine (Thorazine)
perphenazine (Trilafon)
trifluoperazine (Stelazine)
thiothixene (Navane)
haloperidol (Haldol)
fluphenazine (Prolixin)
thioridazine (Mellaril)
loxapine (Loxitane)
haloperidol decanoate (Haldol - D)
fluphenazine decanoate (Prolixin - D)

Note: The first drug name is the generic name, and the name in parenthesis is a common brand name. There may be more than one brand name for each generic name.

II. USES OF THESE MEDICATIONS:

These drugs are used to treat emotional problems. Problems which may improve with the use of these drugs include:

—hearing voices that aren't there
—excessive anger
—serious inability to sleep
—racing thoughts
—inability to concentrate
--extreme anxiety
--irrational fears

Other problems may also be treated with these drugs. It is important that you understand why this medication is being recommended for you. You and your doctor should discuss the role of medication in your treatment. By relieving symptoms, this medication may help you to cope better with life problems.

CONTINUED ON REVERSE

Exhibit 1

STATE OF CALIFORNIA DEPARTMENT OF CORRECTIONS
CDC-128G (Rev. 2/69)

NO. :K-39733 NAME :AHMED ROOM : #D1-102 MEPD 1/1/21 CS: 61
Custody: CLO B Annual: 4/29/99 TB Status: 32
WG: A1 PG: A WL : Assignment : EOP

Comments: INITIAL EOP EVALUATION. ACCEPT INTO EOP, ESTABLISH CUSTODY CLOSE B, WG/PG A1-A EFFECTIVE 1/24/98, ADD TO EOP W/L.

I/M AHMED APPEARED BEFORE FACILITY "D" UCC/IDTT ON THIS DATE FOR THE PURPOSE OF INITIAL EOP EVALUATION. THROUGH DISCUSSION, COMMITTEE WAS ABLE TO ASCERTAIN THAT "S" HAS TRIED TO HANG HIMSELF BASED ON VOICES THAT HE HEARS. COMMITTEE ALSO NOTES THAT "S" HAS SUFFERED IN THE PAST FROM A MENTAL DISORDER AND ELECTS TO ACCEPT INTO THE EOP PROGRAM FOR TREATMENT. IT SHOULD BE NOTED THAT "S" IS IN AGREEMENT WITH THIS COMMITTEE DECISION. "S" CASE FACTORS ARE AS FOLLOWS: "S" IS A 39 YEAR OLD, ETHIOPIAN, 1ST TERMER, RECEIVED IN CDC ON 5/27/97 FROM SAN DIEGO COUNTY FOR THE COMMITMENT OFFENSE OF MURDER 1ST, RESULTING IN A TOTAL TERM OF 29 YEARS TO LIFE. "S" WAS RECEIVED AT CSP-LAC ON 6/12/98 FROM PELICAN BAY STATE PRISON LEVEL IV. ARREST HISTORY INCLUDES THE EXHIBITION OF A FIREARM

Date: 6/24/98 INITIAL REVIEW CLASSIFICATION Inst.: CSP-LAC/md

STATE OF CALIFORNIA DEPARTMENT OF CORRECTIONS
CDC-128G (Rev. 2/69)

NO. :K-39733 NAME :AHMED ROOM : #D1-102

ONLY. "S" HAS A SKILL NOTED AS A JANITOR. GPL IS 3.6 AND TRL IS 2.5. MEDICAL STATUS IS FD/NC, DUE TO MENTAL HEALTH CONCERNS. TB CODE IS 32 PER CDC-128C DATED 8/15/97. "S" ARREST HISTORY IS CLEAR OF ESCAPES, ARSON, AND SEX RELATED OFFENSES. THERE IS A USINS HOLD. SUBSTANCE USE CONSISTS OF ALCOHOL. CDC-812 IS CLEAR OF ENEMY CONCERNS, AND GANG PARTICIPATION. CONFIDENTIAL FILE IS CLEAR. DISCIPLINARY HISTORY IS CLEAR AS OF THE DATE OF THIS DICTATION. "S" IS INELIGIBLE FOR CCRC/CCF/CAMP/MSF/REST/SAP DUE TO HIS LIFE SENTENCE, AND HIS MENTAL HEALTH CONCERNS. "S" IS AN ETHIOPIAN CITIZEN, WITH THE LAST CDC-8021 DATED 4/22/98. REGISTRATION/NOTIFICATION REQUIRED IS PC-290.2/3058.6. RESTITUTION IS ORDERED IN THE AMOUNT OF $200.00. "S" WAS ADVISED OF HIS RIGHTS TO APPEAL, AND THERE ARE NO OTHER CASE CONCERNS AT THIS TIME.

Exhibit NO (2)

Date: 6/24/98 INITIAL REVIEW CLASSIFICATION Inst.: CSP-LAC/md

STATE OF CALIFORNIA DEPARTMENT OF CORRECTIONS
CDC-128G (Rev. 2/69)

NO. :K-39733 NAME :AHMED ROOM : #D1-102

R. McElvaine, CCI

RECORDER: R. MCELVAINE, CCI

COMM: W. JUAREZ, FC; B. CHAVARRIA, CCII; R. MCELVAINE, CCI; DR. LUPI, MD; W. WALSH, PhD; TRINIDAD, MD; E. MORONG, MD; R. BOUNVILLE, PSW; BURKHOLDER, RT; T. RODRIGUEZ, LCSW; DOMINGUEZ, LPT; L. REYES, SAP; JORDAN, TCHR; R. ALVARDO, SGT.

cc: CCI
Inmate

Date: 6/24/98 INITIAL REVIEW CLASSIFICATION Inst.: CSP-LAC/md

Region N / C / S
Facility 2-10

CALIFORNIA DEPARTMENT OF CORRECTIONS
Psychiatric Medications Informed Consent

The medication HALDOL has been recommended for the treatment of my mental problem (s). The Doctor has discussed the reasons why the above medication may be helpful, including the likelihood of the problem(s) improving or not improving with and without medication. I understand that medication will usually be given by mouth and that staff will observe my actually swallowing the medication. I have been told that the dosage of the medication may be adjusted and that the dosage range will be range from 0 mg. per day to a maximum of 20 mg. per day. Additional doses of this same type may be given, dependent on the staff's assessment of my behavior and my reported response to the medication.

The length of time this medication will be prescribed for me is dependent on my response to the medication. The physician has provided me a 'best estimate' of my need for psychiatric medication and the length of time I am likely to be taking such medication. As with all medication, there may be side effects. I understand that I am to tell the staff if I have side effects, as in some cases side effects can be reduced by lowering the dose of medication or using another medication. The following checked side effects are relatively frequent:

- ☒ Heat Risk (Hyperthermia)
- ☐ Nausea
- ☐ Diarrhea
- ☒ Constipation
- ☐ Heartburn
- ☒ Blurry Vision
- ☒ Drowsiness
- ☒ Muscle Stiffness
- ☐ Stop if Pregnant
- ☒ Tremors
- ☒ Rigidity of Neck
- ☒ Low Blood Pressure
- ☐ Dizziness
- ☒ Weight Gain
- ☐ Weight Loss
- ☐ Impotence or Sexual Dysfunction
- ☐ Metallic Taste
- ☐ Blood Cell Problems
- ☒ Dry Mouth
- ☒ Thirst
- ☐ Increase Heart Rate
- ☐ Restlessness
- ☐ Slowed Reflexes
- ☒ Trouble Urinating
- ☐ Frequent Urination
- ☒ Sun Sensitivity
- ☐ Skin Rash
- ☐ Decreased Sex Drive
- ☐ Liver Damage
- ☐ Kidney Damage
- ☐ Habit Forming
- ☐ Physical Dependence
- ☐ Avoid Alcohol
- ☐ ________
- ☐ ________
- ☐ ________

☐ I have been told that this medication may produce persistent involuntary movements of the face or mouth and at times similar movements of the hands and feet. This condition is called Tardive Dyskinesia and in certain cases these symptoms appear to be irreversible and may even appear after the medication has been stopped.

☐ Although the U. S. Government (FDA) has not approved this medication for my specific problem, doctors in the community have found it helpful for similar problems.

☐ I understand that I may change my decision to accept medication at any time by telling any member of the treatment team. Should I decide to stop or to decrease my psychiatric medication, I have been informed to do this under the guidance of staff and not to stop medication suddenly.

Exhibit No. (3)

☒ I am aware that this copy will be in my Health Record.
☒ I want a copy of this consent for my own records.
☐ I want more printed information on this medication.
☒ I agree to take the psychiatric medication as prescribed.

X [signature] (Inmate-Patient Signature)

Does this inmate have the ability to read, comprehend and speak English? ☐ Yes ☐ No ________ Primary Language

Comment: ________

Medical/legal status of Inmate/patient:

☐ Willing to take but refuses to sign the form. Verbal consent given. ☐ Yes ☐ No
Signatures: ________ (physician) ________ (witness)

☐ Emergency medication given as authorized by PC 2600.
☐ PC 2600 procedures started (date): ___/___/___ with ________ PC 2600 coordinator.
☐ PC 2600 case, medication explained.
☐ Inmate/patient appeared to understand
☐ Inmate/patient did not comprehend.

[signature] | Gilbert B. Green, M.D. | Staff Psychiatrist | 3/3/97
Physician's Signature | Print Physician's Name | Print Title | Date

Prescribed for: AHMED, TAJV ___ K39733
Last Name | First Name | MI | Case Number
[May substitute by Address-O-Graph in lower right hand corner]

[EAL generic.doc 2/5/96]

STATE OF CALIFORNIA
CDC 7276 (6/93)

STATEMENT OF INFORMED CONSENT ANTIPSYCHOTIC AGENTS

DEPARTMENT OF CORRECTIONS
DISTRIBUTION:
ORIG - HEALTH RECORD
COPY - PSYCHIATRIC FILE
COPY - INMATE/PAROLEE

STATEMENT OF INFORMED CONSENT

[illegible] | [illegible]
INMATE NAME (PRINT OR TYPE) | CDC NUMBER

Dr. [illegible] met with me and discussed my mental problems. The doctor told me of medications which are known to be of help in treating mental problems such as mine. The doctor told me of any division of opinion as to whether the medication will be helpful, why and how it works and its side effects. The doctor also discussed with me the likelihood of my improving or not improving without such medication(s). We discussed the reasonable treatment alternatives to medication and I understand that I may take the medication(s) and still be involved in other forms of treatment. If the medication is an injectable "long-acting" form, I understand that it may remain in my body for as long as six weeks.

I understand that I may withdraw consent at any time by informing any member of the treatment staff.

☒ I do ☐ I do not consent to taking this medication.

Name of drug, dosage and frequency: [illegible]

INMATE'S SIGNATURE	DATE
X [illegible]	[illegible]
WITNESS TO PATIENT'S SIGNATURE	DATE
X [illegible]	[illegible]

☐ I have discussed the information on this form regarding this medication with the patient and it is my opinion that he/she has the capacity to understand that he/she is mentally ill, that the medication may help with his/her illness, and that there are possible side effects.

☐ I have discussed the information on this form regarding this medication with the patient and it is my opinion that he/she lacks the capacity to understand based upon the following evidence:

PHYSICIAN'S SIGNATURE	DATE
[illegible]	[illegible]

This is to inform you that your doctor has recommended a course of mental health treatment that includes the use of antipsychotic medications. This form will explain to you the type of medication you will receive, what it will do for you, and the possible side effects you may have.

I. SOME EXAMPLES OF THESE DRUGS ARE:

chlorpromazine (Thorazine)
perphenazine (Trilafon)
trifluoperazine (Stelazine)
thiothixene (Navane)
haloperidol (Haldol)
fluphenazine (Prolixin)
thioridazine (Mellaril)
loxapine (Loxitane)
haloperidol decanoate (Haldol - D)
fluphenazine decanoate (Prolixin - D)

Note: The first drug name is the generic name, and the name in parenthesis is a common brand name. There may be more than one brand name for each generic name.

II. USES OF THESE MEDICATIONS:

These drugs are used to treat emotional problems. Problems which may improve with the use of these drugs include:

—hearing voices that aren't there
—excessive anger
—serious inability to sleep
—racing thoughts
—inability to concentrate
--extreme anxiety
--irrational fears

Other problems may also be treated with these drugs. It is important that you understand why this medication is being recommended for you. You and your doctor should discuss the role of medication in your treatment. By relieving symptoms, this medication may help you to cope better with life problems.

CONTINUED ON REVERSE

Exhibit 4

STATE OF CALIFORNIA
CDC 7276 (6/93)

STATEMENT OF INFORMED CONSENT ANTIPSYCHOTIC AGENTS

DEPARTMENT OF CORRECTIONS
DISTRIBUTION:
ORIG - HEALTH RECORD
COPY - PSYCHIATRIC FILE
COPY - INMATE/PAROLEE

STATEMENT OF INFORMED CONSENT

Ahmed, T [illegible] — K [illegible]

INMATE NAME (PRINT OR TYPE) — CDC NUMBER

Dr. [illegible] met with me and discussed my mental problems. The doctor told me of medications which are known to be of help in treating mental problems such as mine. The doctor told me of any division of opinion as to whether the medication will be helpful, why and how it works and its side effects. The doctor also discussed with me the likelihood of my improving or not improving without such medication(s). We discussed the reasonable treatment alternatives to medication and I understand that I may take the medication(s) and still be involved in other forms of treatment. If the medication is an injectable "long-acting" form, I understand that it may remain in my body for as long as six weeks.

I understand that I may withdraw consent at any time by informing any member of the treatment staff.

☐ I do ☐ I do not consent to taking this medication.

Name of drug, dosage and frequency: [illegible handwriting]

INMATE'S SIGNATURE
X Ahmed [signature]   Exhibit (6)
DATE

WITNESS TO PATIENT'S SIGNATURE
X [signature]
DATE 7-15-[illegible]

☐ I have discussed the information on this form regarding this medication with the patient and it is my opinion that he/she has the capacity to understand that he/she is mentally ill, that the medication may help with his/her illness, and that there are possible side effects.

☐ I have discussed the information on this form regarding this medication with the patient and it is my opinion that he/she lacks the capacity to understand based upon the following evidence:__________

PHYSICIAN'S SIGNATURE [signature] MD
DATE

This is to inform you that your doctor has recommended a course of mental health treatment that includes the use of antipsychotic medications. This form will explain to you the type of medication you will receive, what it will do for you, and the possible side effects you may have.

I. SOME EXAMPLES OF THESE DRUGS ARE:

chlorpromazine (Thorazine)
perphenazine (Trilafon)
trifluoperazine (Stelazine)
thiothixene (Navane)
haloperidol (Haldol)
fluphenazine (Prolixin)
thioridazine (Mellaril)
loxapine (Loxitane)
haloperidol decanoate (Haldol - D)
fluphenazine decanoate (Prolixin - D)

Note: The first drug name is the generic name, and the name in parenthesis is a common brand name. There may be more than one brand name for each generic name.

II. USES OF THESE MEDICATIONS:

These drugs are used to treat emotional problems. Problems which may improve with the use of these drugs include:

—hearing voices that aren't there
—excessive anger
—serious inability to sleep
—racing thoughts
—inability to concentrate
--extreme anxiety
--irrational fears

Other problems may also be treated with these drugs. It is important that you understand why this medication is being recommended for you. You and your doctor should discuss the role of medication in your treatment. By relieving symptoms, this medication may help you to cope better with life problems.

CONTINUED ON REVERSE

[signature]

STATE OF CALIFORNIA
CDC 7280 (6/93)

STATEMENT OF INFORMED CONSENT ANTIDEPRESSANTS

DEPARTMENT OF CORRECTIONS
DISTRIBUTION:
ORIG - HEALTH RECORD
COPY - PSYCHIATRIC FILE
COPY - INMATE/PAROLEE

STATEMENT OF INFORMED CONSENT

Taju Ahmed K-39733
INMATE NAME (PRINT OR TYPE) CDC NUMBER

Dr. Keightley met with me and discussed my mental problems. The doctor told me of medications which are known to be of help in treating mental problems such as mine. The doctor told me of any division of opinion as to whether the medication will be helpful, why and how it works and its side effects. The doctor also discussed with me the likelihood of my improving or not improving without such medication(s). We discussed the reasonable treatment alternatives to medication and I understand that I may take the medication(s) and still be involved in other forms of treatment.

I understand that I may withdraw consent at any time by informing any member of the treatment staff.

☒ I do ☐ I do not consent to taking this medication.

Name of drug, dosage and frequency: Paxil 10-40 mg 1 Sen

INMATE'S SIGNATURE X [signature] DATE

WITNESS TO PATIENT'S SIGNATURE X DATE

☒ I have discussed the information on this form regarding this medication with the patient and it is my opinion that he/she has the capacity to understand that he/she is mentally ill, that the medication may help with his/her illness, and that there are possible side effects.

☐ I have discussed the information on this form regarding this medication with the patient and it is my opinion that he/she lacks the capacity to understand based upon the following evidence:

PHYSICIAN'S SIGNATURE [signature] DATE 10-25-00

This is to inform you that your doctor has recommended a course of mental health treatment that includes the use of medications. This form will explain to you the type of medication you will receive, what it will do for you, and the possible side effects you may have.

Exhibit (7)

I. SOME EXAMPLES OF THESE DRUGS ARE:

amitriptyline (Elavil)
desipramine (Norpramin)
doxepin (Sinequan)
imipramine (Tofranil)
nortriptyline (Aventyl)
amoxapine (Asendin)

Note: The first drug name is the generic name, and the name in parenthesis is a common brand name. There may be more than one brand name for each generic name.

II. USES OF THESE MEDICATIONS:
These drugs are used to treat emotional problems. Problems which may improve with the use of these drugs include:

- ✓ feelings of sadness
- —decreased physical activity
- ✓ feelings of worthlessness
- ✓ decreased mental alertness
- —lack of interest in life
- —increased or decreased appetite
- ✓ abnormal sleeping patterns
- —suicidal feelings
- --bothersome anxiety

Other problems may also be treated with these drugs. It is important that you understand why this medication is being recommended for you. You and your doctor should discuss the role of medication in your treatment. By relieving symptoms, this medication may help you to cope better with life problems.

CONTINUED ON REVERSE

15 of 22

STATE OF CALIFORNIA
CDC 7280 (6/93)

STATEMENT OF INFORMED CONSENT ANTIDEPRESSANTS

DEPARTMENT OF CORRECTIONS
DISTRIBUTION:
ORIG - HEALTH RECORD
COPY - PSYCHIATRIC FILE
COPY - INMATE/PAROLEE

STATEMENT OF INFORMED CONSENT

Taju Ahmed K39733
INMATE NAME (PRINT OR TYPE) CDC NUMBER

Dr. Knightley met with me and discussed my mental problems. The doctor told me of medications which are known to be of help in treating mental problems such as mine. The doctor told me of any division of opinion as to whether the medication will be helpful, why and how it works and its side effects. The doctor also discussed with me the likelihood of my improving or not improving without such medication(s). We discussed the reasonable treatment alternatives to medication and I understand that I may take the medication(s) and still be involved in other forms of treatment.

I understand that I may withdraw consent at any time by informing any member of the treatment staff.

☒ I do ☐ I do not consent to taking this medication.

Name of drug, dosage and frequency: Celexa ↑ 40 mg daily

Exhibit (8)

INMATE'S SIGNATURE
X Ahmed Taju DATE 12-11-02

WITNESS TO PATIENT'S SIGNATURE
X [signature] DATE 12/11/02

☒ I have discussed the information on this form regarding this medication with the patient and it is my opinion that he/she has the capacity to understand that he/she is mentally ill, that the medication may help with his/her illness, and that there are possible side effects.

☐ I have discussed the information on this form regarding this medication with the patient and it is my opinion that he/she lacks the capacity to understand based upon the following evidence:__________

PHYSICIAN'S SIGNATURE DATE

This is to inform you that your doctor has recommended a course of mental health treatment that includes the use of medications. This form will explain to you the type of medication you will receive, what it will do for you, and the possible side effects you may have.

I. SOME EXAMPLES OF THESE DRUGS ARE:

amitriptyline (Elavil)
desipramine (Norpramin)
doxepin (Sinequan)
imipramine (Tofranil)
nortriptyline (Aventyl)
amoxapine (Asendin)

Note: The first drug name is the generic name, and the name in parenthesis is a common brand name. There may be more than one brand name for each generic name.

II. USES OF THESE MEDICATIONS:

These drugs are used to treat emotional problems. Problems which may improve with the use of these drugs include:

—feelings of sadness
—decreased physical activity
—feelings of worthlessness
—decreased mental alertness
—lack of interest in life
—increased or decreased appetite
--abnormal sleeping patterns
--suicidal feelings
--bothersome anxiety

Other problems may also be treated with these drugs. It is important that you understand why this medication is being recommended for you. You and your doctor should discuss the role of medication in your treatment. By relieving symptoms, this medication may help you to cope better with life problems.

CONTINUED ON REVERSE

18 of 22

Please see where
I High lighted.
WHAt Honorable ANTHONY J.
BAttAGLIA.
United states MAGistrAte Judge
Wrote About my MANtAl illeness
on his RePoRT and Recommendation

FILED

04 JUN 30 AM 10:32

CLERK, U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

TAJU AHMED, Petitioner, v. C.A. TERHUNE, Respondent.	Civil No. 00cv84-W(AJB) Report and Recommendation Regarding Respondent's Motion to Dismiss [Doc. No. 39]

Petitioner Taju Ahmed, a state prisoner proceeding pro se, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging his conviction for first degree murder in San Diego County Superior Court Case No. SDC120898. Currently pending before the Court, following a remand from the Ninth Circuit Court of Appeals, is Respondent's motion to dismiss Ahmed's first and third claims for relief.[1] Respondent once again argues that Petitioner's first and third claims are procedurally defaulted. By Order filed April 29, 2004, this Court advised Petitioner of his burden in opposing Respondent's motion to dismiss pursuant to the test set forth in *Bennett v. Mueller*, 322 F.3d 573 (9th Cir. 2003). Petitioner has filed an opposition. Respondent did not file a reply. Upon review, this Court once again concludes that the Petitioner's first and third claims are procedurally barred and properly

[1] Ahmed's second claim was originally denied on its merits, and the Ninth Circuit granted a certificate of appealability only on the issue of whether the District Court properly determined that his claims were procedurally defaulted. Thus, there remains no issue with regard to Ahmed's second claim for relief. That claim has been denied.

42 Exhibit 9

dismissed. Thus, it is recommended that the Respondent's motion to dismiss be GRANTED and this action dismissed with prejudice.

Facts and Procedural History

Petitioner Taju Ahmed was convicted by a jury in San Diego County Superior Court Case No. SCD120898 of the first degree murder of a male acquaintance at Ahmed's apartment in May 1996. He was sentenced on February 11, 1997 to 29 years to life in prison for the murder and the personal use of a firearm. Ahmed had been diagnosed five years before the incident as paranoid schizophrenic. His defense theory was self defense and imperfect self defense based on mental disorder. Mot. Ex. "B", p. 5.[2]

Ahmed appealed his conviction to the California Fourth District Court of Appeal. He alleged his "federal constitutional rights to due process guaranteed by the 14th Amendment" were violated when the trial court sustained objections to two questions defense counsel posed to police detective Flynn, apparently designed to elicit lay opinion of Ahmed's mental condition. Ahmed also asserted that his restitution fine must be reduced. Mot. Ex. "B", pp. 7-8. In a September 1, 1998 unpublished opinion, the Court of Appeal modified the judgment to reduce the restitution fine, but affirmed the conviction after a reasoned analysis.[3] Mot. Ex. "B". Ahmed petitioned the California Supreme Court for review, alleging only prejudicial error in the exclusion of investigating officer Flynn's testimony. Mot. Ex. "C". The California Supreme Court summarily denied review on November 19, 1998. Mot. Ex. "D".

Ahmed filed a Petition For Writ Of Habeas Corpus in the California Court of Appeal on January 19, 1999. Mot. Ex. "E". He asserted a single ground for relief: "the trial court violated [his] constitutional rights by erroneously admitting statements he made to officer Flynn." *Id.*, p. 3. Ahmed contended that videotaped statements he made "were obtained in violation of [*Miranda*] procedural safeguards," and were improperly admitted as evidence at his trial. *Id.* Ahmed also complained of his inability to obtain a copy of Detective Flynn's report. Mot. Ex. "E". In its April 14, 1999 decision, the

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[2] Relevant portions of the state court record were lodged with the Courts as exhibits to Respondent's points and authorities in support of the original motion to dismiss. Dkt. No. 8. Thus citations are to the exhibits attached to that original points and authorities.

[3] As permitted by 28 U.S.C. §2254(e), the court relies on the facts as set forth in the state appellate opinion. Mot. Ex. "B".

Court of Appeal stated it had "read and considered" the habeas petition, and was enclosing with its ruling "a copy of the report by Detective Flynn on May 8, 1996," then dismissed the petition without prejudice. Mot. Ex. "F".

On February 1, 1999, Ahmed filed his first federal Petition For Writ Of Habeas Corpus in this Court, opening Case No. 99cv0169-IEG(CGA). Mot. Ex. "G". The Petition presented a single claim: the trial court allegedly made improper evidentiary rulings in connection with Detective Flynn's testimony in violation of Ahmed's' Fourteenth Amendment right to due process. [4] *Id.* On August 23, 1999, Ahmed filed a "Motion To Dismiss Habeas Corpus Petition In Order To Exhaust State Remedies." Mot. Ex. "K". On November 18, 1999, the motion was granted and Ahmed's federal petition was dismissed without prejudice. Mot. Ex. "L".

Meanwhile, on September 7, 1999, Ahmed filed a Petition For Writ Of Habeas Corpus with the California Supreme Court. Mot. Ex. "M". He asserted three grounds for relief. First, he contended his constitutional right to due process was violated when the trial court allowed into evidence incriminating statements Ahmed made purportedly in violation of his *Miranda* rights. He alleged, among other things: his inability to "understand his *Miranda* rights clearly in English" when he was interrogated by the police about the crime; his impairment at the time due to the psychotropic drugs he was taking for his "severe psychological condition;" and that he was allowed access to an interpreter only after he had waived his *Miranda* rights. *Id.* at pp. 3-8. Second, Ahmed challenged the exclusion of "relevant testimony by a peace officer, even if it was hearsay," purportedly because a CAL. EVID. CODE hearsay exception applied and that evidentiary ruling had "a profound effect on the defen[se] strategy." *Id.* at pp. 9-14. The substance of his new claim asserted that an officer Ursey would have testified about a 1995 domestic violence incident, unrelated to Ahmed's crime, involving the man Ahmed killed. Ahmed sought to introduce that testimony to show the deceased was violent when intoxicated. The alleged victim of the domestic violence incident could not be located to appear at Ahmed's trial. Ahmed relied solely on the CAL. EVID. CODE § 1370 exception to the hearsay rule and a citation to *Chapman v. California*, 386 U.S. 18 (1967). He alleged no infringement of any federal constitutional right. Third, Ahmed claimed the appointment of an interpreter who allegedly "did not know how to interpret Petitioner's native [Ethiopian] dialect into English competently" denied Ahmed "a fair trial and due process of the law," citing his "6th Amendment right to confront witnesses under the Confrontation Clause" and the Fourteenth Amendment. *Id.* at pp. 15-17. The California Supreme Court summarily denied Ahmed's habeas petition on November 23, 1999, citing *In re Dixon* (1953) 41 Cal.2d 756, 759 and *In re. Swain* (1949) 34 Cal.2d 300, 304. Mot. Ex. "N".

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[4] The matter was dismissed without prejudice on February 10, 1999 for failure to pay the filing fee. Mot. Ex. "H". The case was reopened on March 15, 1999 when Ahmed paid the filing fee. Mot. Ex. "I". Respondent timely filed an Answer, but Ahmed missed the July 6, 1999 deadline for filing a Traverse. *See* Mot. Ex. "J", p. 1. Six days later, Ahmed filed a Motion To Stay Petition in order to exhaust state remedies on a new, unspecified issue and sought leave to amend his petition upon exhaustion of the new issue. *Id.*, pp. 1-2. By Order filed August 9, 1999, the motion was denied, and Ahmed was given the options (1) to dismiss his federal case in order to exhaust state court remedies, warning Ahmed of the potential statute of limitations issues, or (2) to proceed with his federal petition containing his one exhausted claim. *Id.*, pp. 3-5.

On January 13, 2000, Ahmed filed the instant federal Petition.[5] He raised substantially the same three claims as he had presented in his state habeas petition to the California Supreme Court. However, he added to his second claim (*i.e.* exclusion of officer Ursey's testimony) the allegation that the ruling not only violated the California Evidence Code but also infringed his federal constitutional right to due process. Respondent moved to dismiss Ahmed's "mixed" petition for failure to exhaust his state court remedies on the second claim. Respondent also contended that Ahmed's first and third claims were procedurally barred. On September 1, 2000, then-Magistrate Judge Burns recommended that the motion to dismiss be granted, finding that the first and third claims were procedurally barred, and that the second claim was properly rejected on its merits. The report and recommendation was adopted by the District Judge on September 22, 2000, and Ahmed's petition was dismissed. Ahmed appealed.

The Ninth Circuit originally affirmed the dismissal of Ahmed's petition. That original unpublished decision, however, was withdrawn. By unpublished memorandum decision filed November 23, 2003, the Ninth Circuit vacated the District Court's decision that Ahmed's claims were procedurally barred and remanded for further proceedings consistent with *Bennett v. Mueller*, 322 F.3d 753 (9th Cir. 2003). Following remand, Respondent once again filed a motion to dismiss as to Ahmed's first and third claims, arguing such claims were procedurally barred. On April 29, 2004, this Court issued an order advising Ahmed of his burden in opposing Respondent's motion to dismiss as set forth in *Bennett.* Petitioner has filed an opposition.

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[5] The case was dismissed without prejudice on January 24, 2000 for failure to pay the filing fee. Dkt No. 2. On that same date, this court issued its Notice Regarding Possible Failure To Exhaust And One Year Statute Of Limitations. Dkt No. 4. Ahmed paid the filing fee on February 11, 2000, and the federal case was reopened on February 23, 2000.

Discussion

"Federal courts 'will not review a question of federal law decided by a state court if the decision of that court rests on a state law ground that is independent of the federal question and adequate to support the judgment.'" *Bennett*, 322 F.3d at 580 (quoting *Coleman v. Thompson*, 601 U.S. 722, 729 (1991)).

> Under the adequate and independent state grounds doctrine, federal courts "will not review a question of federal law decided by a state court if the decision of that court rests on a state law ground that is independent of the federal question and adequate to support the judgment." . . . " The procedural default doctrine is a specific application of the general adequate and independent state grounds doctrine.. . ." The procedural default doctrine "bar[s] federal habeas when a state court declined to address a prisoner's federal claims because the prisoner had failed to meet a state procedural requirement." ¶ . . . For the procedural default doctrine to apply, a state rule must be clear, consistently applied, and well-established at the time of the petitioner's purported default. . . .

Fields v. Calderon, 125 F.3d 757, 761-62 (9th Cir. 1997) (citations omitted).

1. Independence

"For a state procedural rule to be 'independent,' the state law basis for the decision must not be interwoven with federal law." *LaCrosse v. Kernan*, 244 F.3d 702, 704 (9th Cir. 2001). "A state law ground is so interwoven if 'the state has made application of the procedural bar depend on an antecedent ruling on federal law [such as] the determination of whether federal constitutional error has been committed." *Park*, 202 F.3d at 1152; *see also Ake v. Oklahoma*, 470 U.S. 68, 75 (1985)); *Coleman*, 501 U.S. at 729.

The California Supreme Court denied Ahmed's habeas petition on November 23, 1999 in a summary decision, stating in its entirety: "Petition for writ of habeas corpus is DENIED. (*In re Dixon* (1953) 41 Cal.2d 756, 759; *In re Swain* (1949) 34 Cal.2d 300, 304." Mot. Ex. "N". Citation to *Swain* or *Dixon* invokes well established procedural rules under California law.

> In *Swain*, the California Supreme Court held that a state habeas petitioner who 'belatedly presents a collateral attack ... [must] explain the delay in raising the question." . . .The *Swain* rule is commonly referred to as the "untimeliness" bar . . . . In *Dixon*, the California Supreme Court held that "in the absence of special circumstances constituting an excuse for failure to employ [the] remedy [of direct review], the writ will not lie where the claimed errors could have been, but were not, raised upon a timely appeal from a judgment of conviction." . . . The *Dixon* and *Swain* rules are "separate and distinct" procedural bars.

Washington v. Cambra, 208 F.3d 832, 833-34 (9th Cir. 2000) (citations omitted).[6]

Traditionally, in determining whether petitions barred by the untimeliness rule of *Swain* or the *Dixon* bar qualified for an exception to those procedural rules, the California courts "considered the federal constitutional merits of the petitions." *Bennett*, 322 F.3d at 581. In *In re Robbins*, 18 Cal. 4th 770 (1998), however, the California Supreme Court declared that henceforth, "it would no longer consider federal law in denying a petition on untimeliness grounds." *Bennett*, 322 F.3d at 581. In *Bennett*, the Court held that because *Robbins* makes clear that in the future California courts would not consider federal law when deciding whether claims are procedurally defaulted, a post-*Robbins* invocation of California's untimeliness rule under *Swain* and other cases would be considered an independent state law procedural ground. *Bennett*, 322 F.3d at 581. Although the Court in *Bennett* did not directly address the independence of the *Dixon* rule, the same rationale applies. *See Protsman v. Pliler*, __ F. Supp. 2d __, 2004 WL 1157774 (S.D. Cal. 2004).

In October 1998, after the California Court of Appeal denied Ahmed's appeal, he filed for review by the California Supreme Court, but raised none of the claims he subsequently presented in his habeas petition to that court. Ten months after his petition for review was denied, he filed his habeas corpus petition with the California Supreme Court raising for the first time the claims at issue in his current petition. That petition was denied by the California Supreme Court by citation to *Swain* and *Dixon*. Pursuant to *Bennett*, the California Supreme Court's citation to these procedural rules constituted an independent state law ground for denial of relief.

2. Adequacy

"To be deemed adequate, the state law ground for decision must be well-established and consistently applied." *Bennett*, 322 F.3d at 583.

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[6] *Swain* may also be cited "to indicate that claims have not been alleged with sufficient particularity. That deficiency, when it exists, can be cured in a renewed petition." *Kim v. Villalobos*, 799 F.2d 1317, 1319 (9th Cir. 1986). Ahmed's habeas petition to the California Supreme Court consisted of 19 pages of descriptive detail regarding the basis for his contentions, supporting the view that he alleged them with a maximum of particularity. The conclusion that the Court cited *Swain* for its untimeliness bar is further supported by Ahmed's delay from the April 14, 1999 California Court of Appeal dismissal of his first state habeas petition until September 7, 1999 to file his California Supreme Court habeas petition. *See Robbins*, 18 Cal. 4th at 784. Ahmed offered no justification for his delay in raising the claims he presented for the first time in his California Supreme Court petition.

> Once the state has adequately pled the existence of an independent and adequate state procedural ground as an affirmative defense, the burden to place that defense in issue shifts to the petitioner. The petitioner may satisfy this burden by asserting specific factual allegations that demonstrate the inadequacy of the state procedure, including citation to authority demonstrating inconsistent application of the rule. Once having done so, however, the ultimate burden is the state's.

Id. at 586. Having been advised of this burden-shifting paradigm in the Court's April 29, 2004 Order requiring additional briefing, Petitioner's opposition to the current motion to dismiss contains no argument regarding why the procedural rules relied upon by the California Supreme Court are inadequate.

As the Ninth Circuit pointed out in *Park*, the California Supreme Court in *In re Harris*, 5 Cal. 4th 813 (1993) and *In re Clark*, 5 Cal. 4th 750 (1993) re-defined the manner in which California courts were to exercise their discretion when applying the *Dixon* rule and the untimeliness bar. *Park*, 202 F.3d at 1151. "These decisions were intended to 'reestablish California's procedural rules governing state habeas petitions and clearly define and limit the applicable exceptions.'" *Id.* (quoting *Fields*, 125 F.3d at 763-64). Ahmed has pointed to, and this Court is aware of, no judicial opinions holding these state procedural rules to be inadequate to bar federal review. As such, it is recommended that Ahmed's claims be found to be procedurally barred.

3. Cause and Prejudice

Although Ahmed's claims are procedurally barred by adequate and independent state grounds, those claims may be reviewed by this Court upon a showing of "cause for the default and actual prejudice as a result of the alleged violation of federal law." *Vansickel v. White*, 166 F.3d 953, 958 (9th Cir. 1999). Alternatively, this Court may reach the merits of Ahmed's claims if he demonstrates that "failure to consider the claims will result in a fundamental miscarriage of justice." *Id.* In his opposition to the pending motion to dismiss, Ahmed does not set forth any grounds justifying cause for his procedural default, and does not set forth any reasons why failure to address the merits of his claims would result in actual prejudice or a fundamental miscarriage of justice. Thus, it is recommended that Respondent's motion to dismiss be GRANTED and Ahmed's petition be dismissed with prejudice.

Conclusion

Ahmed's claims are barred because the state court's decision rejecting those claims rested on adequate and independent state law grounds. Thus, it is recommended that Respondent's motion to dismiss be granted, and Ahmed's petition be dismissed with prejudice. This report and recommendation will be submitted to the United States District Judge assigned to this case, pursuant to the provisions of 28 U.S.C. §636 (b)(1) (1988). Any party may file written objections with the court and serve a copy on all parties by ***July 28, 2004***. The document should be captioned "Objections to Report and Recommendation." Any reply to the objections shall be served and filed by ***August 11, 2004***. The parties are advised that failure to file objections within the specified time may waive the right to raise those objections on appeal of the Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: 6/29/04

ANTHONY J. BATTAGLIA
United States Magistrate Judge

cc: Judge Whelan
All Counsel of Record

STATE OF CALIFORNIA DEPARTMENT OF CORRECTIONS
CDC-128G (Rev. 2/63)

NO. :K-39733 NAME :AHMED ROOM : #D1-102 MEPD 1/1/21 CS: 61
Custody: CLO B Annual: 4/29/99 TB Status: 32
WG: A1 PG: A WL : Assignment : EOP

Comments: INITIAL EOP EVALUATION. ACCEPT INTO EOP, ESTABLISH CUSTODY CLOSE B, WG/PG A1-A EFFECTIVE 1/24/98, ADD TO EOP W/L.

I/M AHMED APPEARED BEFORE FACILITY "D" UCC/IDTT ON THIS DATE FOR THE PURPOSE OF INITIAL EOP EVALUATION. THROUGH DISCUSSION, COMMITTEE WAS ABLE TO ASCERTAIN THAT "S" HAS TRIED TO HANG HIMSELF BASED ON VOICES THAT HE HEARS. COMMITTEE ALSO NOTES THAT "S" HAS SUFFERED IN THE PAST FROM A MENTAL DISORDER AND ELECTS TO ACCEPT INTO THE EOP PROGRAM FOR TREATMENT. IT SHOULD BE NOTED THAT "S" IS IN AGREEMENT WITH THIS COMMITTEE DECISION. "S" CASE FACTORS ARE AS FOLLOWS: "S" IS A 39 YEAR OLD, ETHIOPIAN, 1ST TERMER, RECEIVED IN CDC ON 5/27/97 FROM SAN DIEGO COUNTY FOR THE COMMITMENT OFFENSE OF MURDER 1ST, RESULTING IN A TOTAL TERM OF 29 YEARS TO LIFE. "S" WAS RECEIVED AT CSP-LAC ON 6/12/98 FROM PELICAN BAY STATE PRISON LEVEL IV. ARREST HISTORY INCLUDES THE EXHIBITION OF A FIREARM

Date: 6/24/98 INITIAL REVIEW CLASSIFICATION Inst.: CSP-LAC/md

STATE OF CALIFORNIA DEPARTMENT OF CORRECTIONS
CDC-128G (Rev. 2/63)

NO. :K-39733 NAME :AHMED ROOM : #D1-102

ONLY. "S" HAS A SKILL NOTED AS A JANITOR. GPL IS 3.6 AND TRL IS 2.5. MEDICAL STATUS IS FD/NC, DUE TO MENTAL HEALTH CONCERNS. TB CODE IS 32 PER CDC-128C DATED 8/15/97. "S" ARREST HISTORY IS CLEAR OF ESCAPES, ARSON, AND SEX RELATED OFFENSES. THERE IS A USINS HOLD. SUBSTANCE USE CONSISTS OF ALCOHOL. CDC-812 IS CLEAR OF ENEMY CONCERNS, AND GANG PARTICIPATION. CONFIDENTIAL FILE IS CLEAR. DISCIPLINARY HISTORY IS CLEAR AS OF THE DATE OF THIS DICTATION. "S" IS INELIGIBLE FOR CCRC/CCF/CAMP/MSF/REST/SAP DUE TO HIS LIFE SENTENCE, AND HIS MENTAL HEALTH CONCERNS. "S" IS AN ETHIOPIAN CITIZEN, WITH THE LAST CDC-8021 DATED 4/22/98. REGISTRATION/NOTIFICATION REQUIRED IS PC-290.2/3058.6. RESTITUTION IS ORDERED IN THE AMOUNT OF $200.00. "S" WAS ADVISED OF HIS RIGHTS TO APPEAL, AND THERE ARE NO OTHER CASE CONCERNS AT THIS TIME.

Exhibit No (2)

Date: 6/24/98 INITIAL REVIEW CLASSIFICATION Inst.: CSP-LAC/md

STATE OF CALIFORNIA DEPARTMENT OF CORRECTIONS
CDC-128G (Rev. 2/59)

NO. :K-39733 NAME :AHMED ROOM : #D1-102

R. McElvaine, CCI

RECORDER: R. MCELVAINE, CCI

COMM: W. JUAREZ, FC; B. CHAVARRIA, CCII; R. MCELVAINE, CCI; DR. LUPI, MD; W. WALSH, PhD; TRINIDAD, MD; E. MORONG, MD; R. BOUNVILLE, PSW; BURKHOLDER, RT; T. RODRIGUEZ, LCSW; DOMINGUEZ, LPT; L. REYES, SAP; JORDAN, TCHR; R. ALVARDO, SGT.

cc: CCI
Inmate

Date: 6/24/98 INITIAL REVIEW CLASSIFICATION Inst.: CSP-LAC/md

8 of 28

3

This Exhibit
FOR motion and Declation
FOR Appointment of counsel
Please go through
the ~~Exbita~~ Exhibit One by
ONE thank you,

DECLARATION IN SUPPORT OF MENTAL ILLNESS

I, R McElvane, am a employee at CSP-LAC, California State Prison, Los Angeles County, 44750 60th Street West, Lancaster, California 93536.

As part of my employment at CSP-LAC, I am a Correctional Counselor (CCI). I am assigned to Facility "D" Building one (1) as inmate, Ahmed's, CDC# K-39733, counselor.

I declare that inmate, Ahmed, is housed in a **Enhanced Outpatient Program (EOP),** for inmates suffering from some form of mental illness.

As part of inmate, Ahmed's, placement in the (EOP) he is currently taking **Psychotropic** medications that results in side effects, causing **"slow reasoning, comprehension, and concentration."**

I, Ahmed Ahmed, declare under penalty of perjury that the above is true and correct.

Dated: 10/20/ (1998)

/s/ R McElvane CC I

R McElvane
(Print Name)

Exhibit (3)

9 of 28

TAJU M. Ahmed
Name
K39733
Prison Identification Number
44750 60th Street West
Lancaster, California 93536

UNITED STATES DISTRICT COURT FOR
CALIFORNIA SOUTHERN DISTRICT.

TAJU Ahmed
Petitioner,

vs.

E.C. ROE, Warden
Respondent.

No.: 99-CV-169-IEG (CGA)

MOTION AND DECLARATION FOR APPOINTMENT OF COUNSEL ON HABEAS CORPUS FOR INDIGENT AND MENTALLY ILL INMATE

Petitioner, TAJU Ahmed, moves the Court for an order appointing Counsel at public expense Pursuant to 28 U.S.C. Section 1915 (d) and 18 U.S.C. Section 3006A;

Counsel should be appointed because petitioner is a mentally ill inmate, and taking psychotropic medications that results in side effects, causing **"slow reasoning, comprehension, and concentration."**

Pursuant to Kreling v. Field (9th Cir. 1970) 431 F.2d 638; When the issues are complex for s inmates because he is illiterate or mentally ill, appointment of counsel becomes mandatory, Dill v. US (9th Cir. 1962) 307 F.2d 445; Hawkins v. Bennett 8th Cir 1970, 423 F.2d 948; Whereas it is petitioner request that counsel be appointment to represent Petitioner.

Dated 4 22-00

Exhibit(4)

TAJU Ahmed
(Print Name)
44750 60th Street West
Lancaster, California 93536

10 of 28

Name
TAJU MOHAMMED
Prison identification Number
44750 60th Street West
Lancaster, California 93536

RECEIVED
OCT 26 1998
CLERK SUPREME COURT

CALIFORNIA SUPREME COURT

TAJU MOHAMMED
Petitioner,

vs.

E.C. ROE, Warden
Respondent.

No.: D027025

MOTION AND DECLARATION FOR APPOINTMENT OF COUNSEL ON HABEAS CORPUS FOR INDIGENT AND MENTALLY ILL INMATE

Petitioner, TAJU MOHAMMED, moves the Court for an order appointing Counsel at public expense Pursuant to 28 U.S.C. Section 1915 (d) and 18 U.S.C. Section 3006A;

Counsel should be appointed because petitioner is a mentally ill inmate, and taking psychotropic medications that results in side effects, causing **"slow reasoning, comprehension, and concentration."**

Pursuant to Kreling v. Field (9th Cir. 1970) 431 F.2d 638; When the issues are complex for s inmates because he is illiterate or mentally ill, appointment of counsel becomes mandatory, Dill v. US (9th Cir. 1962) 307 F.2d 445; Hawkins v. Bennett 8th Cir 1970, 423 F.2d 948; Whereas it is petitioner request that counsel be appointment to represent Petitioner.

Dated 10-22- (1998)

/s/ Ahmed Taju

TAJU MOHAMMED AHMED
(Print Name)
44750 60th Street West
Lancaster, California 93536

Exhibit (5)

11 of 22

Case Name: TAJU Ahmed ~~00-00084 TJW~~

Case Number: 00-00084 TJW

Court: United States District court

PROOF OF SERVICE BY MAIL

I, TAJU Ahmed declare:

That I am over the age of eighteen years of age and am not a party to the above entitled cause of action. That I reside in Solano County, California at the California Medical Facility, at 1600 California Drive, P.O. Box 2500, Vacaville, California, 95696-2500.

That on 7/19/08 I served the attached: a true copy of the attached:

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal legal mail collection system at the California Medical Facility, Vacaville, California, addressed as follows:

I declare under penalty of perjury and under the laws of the State of California that the foregoing is true and correct. That this proof of service was executed on the C.M.F VACAVILLE at California Medical Facility, Vacaville, California.

TAJU Ahmed
Declarant

[signature]
Declarant's Signature

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

2254 1983

FILING FEE PAID Yes No ✓

IFP MOTION FILED Yes No ✓

COPIES SENT TO Court ✓ ProSe

FILED

JUL 25 2008

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY [signature] DEPUTY

I (a) PLAINTIFFS

Taju Ahmed

DEFENDANTS

David Knowles

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Solano
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Taju Ahmed
1600 California Drive
Vacaville, CA 95696
K-39733

ATTORNEYS (IF KNOWN)

'08 CV 1352 BTM NLS

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX (For Diversity Cases Only) FOR PLAINTIFF AND ONE BOX FOR DEFENDANT

	PT	DEF		PT	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business in This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business in Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 2254

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT
- ☐ 110 Insurance
- ☐ Marine
- ☐ Miller Act
- ☐ Negotiable Instrument
- ☐ 150 Recovery of Overpayment &Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153Recovery of Overpayment of Veterans Benefits
- ☐ 160 Stockholders Suits
- ☐ Other Contract
- ☐ 195 Contract Product Liability

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Eiectmant
- ☐ 240 Tort to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS — PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury-Medical Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/Accommodations
- ☐ 444 Welfare
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence Habeas Corpus
- ☒ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC881
- ☐ 630 Liquor Laws
- ☐ 640 RR & Truck
- ☐ 650 Airline Regs
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710Fair Labor Standards Act
- 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt. Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc.
- ☐ Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (13958)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS - Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reappointment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce/ICC Rates/etc.
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities Exchange
- ☐ 875 Customer Challenge 12 USC
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State
- ☐ 890 Other Statutory Actions

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appelate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23 DEMAND $ Check YES only if demanded in complaint: JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE Docket Number

DATE 7/25/2008 ~~SIGNATURE OF ATTORNEY OF RECORD~~

R. Mulley